



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
R. D. SIBLEY & CO. }

Appearances:

For Appellant: R. Wollenweber of San Francisco

For Respondent: A. A. Manship, Franchise Tax Commissioner

O P I N I O N

This is an appeal under Section 25 of the California Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929) from the action of the Franchise Tax Commissioner in overruling the protest of R. D. Sibley & Co., a corporation, against a proposed additional assessment of \$171.36 based upon the return of said corporation for the year ended December 31, 1929,

The sole point involved is the amount to be' deducted from the gross income as an allowance for the salary of Mr. R. D. Sibley, President of the Appellant corporation. The pertinent provisions of the law on this point are to be found in Section 8 of the act which reads, in part, as follows: "In computing 'net income' the following deductions shall be allowed: (a) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, * * * *"

It appears that the actual salary of Mr. Sibley has been \$6,600 per annum and that this amount was returned to the federal government as the amount of his salary for the taxable year under consideration, However, the Appellant has asked for an additional deduction on this account of \$4,877.40, saying that the principal source of revenue of the corporation is from commissions on account of sales and leases of real estate and these earnings are due principally to the work and effort of Mr. Sibley who holds all of the stock except the qualifying shares. Further attention is directed to the fact that the corporation operates with very little capital and by reason of the character of the business done there is practically no offset for property taxes so that the tax imposed under this act becomes in actuality a tax upon the personal effort of one man.

If we were permitted to modify the application of the law to meet extenuating circumstances we believe that this might well be a case for such modification. However, as the facts come to us it is clear that the additional \$4,877.40 was not paid to Mr. Sibley as "salary" under any contract which he had with the Appellant corporation. On the contrary, it was what

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was distributed to him as its principal stockholder after other expenses of the business, including his salary fixed at \$6,600, had been met, We cannot recognize a payment made in this way as an allowance for salary or "other compensation for personal services actually rendered". We do not wish to be understood as saying that Mr. Sibley is not capable of earning a salary of \$11,477 in the work in which he has been engaged or that if the corporation should pay him a salary of that amount that it would be an unreasonably large compensation. That is not the issue before us for determination. Under the circumstances of the present question we do not see how we can consider the addition; \$4,877.40 as an item for deduction within the meaning of Section 8 of the Act much as we may regret the practical effect whereby the tax becomes a direct burden on the personal earning power of Mr. Sibley.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of the Franchise Tax Commissioner in overruling the protest of R. D. Sibley & Co., a corporation, against a proposed additional assessment of 3171.36, based upon a return of said corporation for the year ended December 31, 1929, under Chapter 13, Statutes of 1929, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of May, 1931,
by the State Board of Equalization.

Jno. Corbett, Chairman
H. G. Cattell, Member
R. E. Collins, Member
Fred E. Stewart, Member

ATTEST: Dixwell L. Pierce, Secretary